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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,022	01/25/2002	James F. McGuckin JR.	1111	4795

7590

06/03/2005

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EXAMINER

KENNEDY, SHARON E

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

Application No.

10/057,022

Applicant(s)

MCGUCKIN ET AL.

Examiner

Sharon Kennedy

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-12 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-12 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8 and 20-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action or the MPEP.

#### ***Claim Rejections - 35 USC § 112***

Claims 1, 2, 4-8, 20-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 now refers to a "first" lumen and a "central" lumen, when in fact the two lumens are the same. This is confusing. See the possible interpretation errors that can occur when the Bogue '535 reference was applied below. It is suggested that applicant change "first" to --central-- since this is consistent with the specification.

#### ***Claim Rejections - 35 USC § 102***

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Chait, US 6,223,070. Chait discloses a coiled catheter with numerous side openings and having a stiffening member 120 which has a lumen into which a guide wire can be placed. See column 5, lines 2-11 for a description of how the catheter is inserted. Note that the preambles of applicant's claims are not accorded much patentable weight. The bodies of the claims are considered to be complete in itself. For more details concerning this interpretation, see MPEP 2111.02, "Effect of Preamble."

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hill, US 1,248,492. See ports 27 and figures 3, 4 wherein the stiffening lumen is mounted to the proximal portion of the catheter and the distal end of the stiffening

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member is proximal to the distal end of the catheter. Again, note that the preambles of applicant's claims are not accorded much patentable weight. The bodies of the claims are considered to be complete in itself. For more details concerning this interpretation, see MPEP 2111.02, "Effect of Preamble."

Claims 1, 2, 5, 6, 7, 23, 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Tihon, US 6,358,229. Note that the devices lock together at the proximal end. Although the Tihon catheter has a closed distal tip, nothing in the claims call for an open distal end. Regarding the abutment shoulder, the examiner takes the position that the closed distal tip 16 anticipates the claimed shoulder. Once again, note that the preambles of applicant's claims are not accorded much patentable weight. The bodies of the claims are considered to be complete in itself. For more details concerning this interpretation, see MPEP 2111.02, "Effect of Preamble."

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wittes et al., US-3,680,562. See especially sheet 1. Distal tip 34 is bullet shaped as claimed. Note the coiling in figure 1.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Bogue et al., US 4,270,535. The comments set forth in the last office action regarding Bogue are incorporated herein: See especially figure 2. Tapered portion 28 anticipates the claimed stiffening insert. Removable trocar 17 anticipates the claimed stiffening member. The claimed "first longitudinally extending lumen" is anticipated by the outer lumen which communicates with apertures 20. The claimed central lumen is anticipated by the inner lumen 14 into which the removable trocar 17 is inserted.

***Claim Rejections - 35 USC § 103***

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hill '492. Although Hill only discloses two side ports 27, clearly this is not a limiting feature of the Hill device. "One or more openings" are intended. See column 2, lines 108-115.

***Allowable Subject Matter***

Claims 8, 20-22, 24 and 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 9-12 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 8, the concept of stretching a catheter is not well known. The closest prior art is the patent to Ghajar, US 5,180,387. That catheter is stretched with a stylet. The stylet is not described, but generally stylets refer to devices similar to guide wires. Regarding claim 20, Bogue is the closest prior art, but does not show the stiffening insert communicating with the "first" lumen in view of the extra interior tubular length 14. Regarding claims directed to the threaded portion on the stiffening member, while this is not unheard of in general, this feature is not found in combination with applicant's other claimed elements. Regarding claim 9, this is still allowable in view of Tihon because the lumen extends to the distal portion. The examiner interprets this to mean that the distal end is open. In contract, the Tihon distal end is closed. See portion 16.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

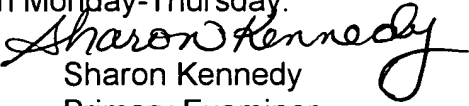
***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

  
Sharon Kennedy  
Primary Examiner  
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